the appellant a house-key was found. Three days later, that is on the 21st July 1948, the appellant took a police Inspector to his, the appellant's house, and after entry had been obtained by unlocking the house door with the key aforesaid, the appellant pointed out to the Police Inspector a revolver which was lying concealed in a cupboard.

Later, on the 21st July, 1948, the appellant made a statement to that Police Inspector, having been duly cautioned, and in that statement he gave two contradictory accounts of how he came to be in possession of the revolver. He first said that two Chinese had left the revolver with him for safe custody on the day he was arrested, but later in the same statement he said the revolver was his own property.

At his trial the appellant made a statement from the dock and therefore could not be subjected to cross-examination. Since the defence was that the appellant had voluntarily disclosed the whereabouts of the revolver to the police, that statement must be considered with care. That statement is as follows :—

> On night of 18th July, 1948, two men Wong Foo and Wong Kwai Hong came to my house and brought a small parcel. They said they wanted me to keep it in the house for a night only and that they would take it away in the morning. I asked them what the contents were. They said it was a revolver. I told them they could not leave it, it was very dangerous. They said it was only for a night and gave their word they would take it away in the morning. I said "If you don't take it away then there will be a lot of trouble". I was not co-operating with them, as they didn't trust me any more. They went away in the car with me. We were stopped at Selayang. On my arrest I was so frightened that I did not know what to do or what to say, until two days later, when I thought, if I did not disclose it, the two men might break into the house and get the revolver and do more harm with it. This was the first time I had ever seen a revolver. I never saw one in my life before. That is all.

Ignoring the admission made by the appellant to the police that the revolver belonged to him, and giving the statement he made in Court a construction most favourable to the appellant, it is clear that his intention was to keep the revolver for the two men over-night and hand it back to them next morning. It was not his intention to hand it over to the police at that time, nor did he disclose any such intention until three days later when he pointed out the whereabouts of the revolver to the police. Hence there can be no doubt that the appellant was in possession of that revolver with the intention of handing it back to the two men who left it with him and with whom, on his own statement, he had previously been co-operating, but had since stopped such co-operation because they did not trust him any more.

The trial was complicated at the end by the Assessors adding a rider to their opinions that the appellant had acted under duress. This they did when in fact no express defence of duress had been submitted. The learned trial Judge could have quite properly rejected this rider of duress, because we cannot find any evidence to support it. But in spite of that, the learned trial Judge *ex abundanti cautela* directed the Assessors on the law relating to duress which is contained in section 94 of the Penal Code (Cap. 45) which is as follows :—

> Except murder and offences included in Chapter VI punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Counsel for the appellant attacked that part of the learned Judge's directions to the Assessors on the ground that he had directed them that only fear of immediate death would be a sufficient excuse.

We can find nothing wrong in these directions. It is clear from section 94 itself and from decided cases e.g. *M'Growther's Case*[1] and *R. v. Stratton*[2], that duress to be pleaded successfully must be imminent, extreme and persistent. There is nothing on the record in this case to suggest that duress was present or continued when the appellant went out in the car with the other Chinese on the 18th July, 1948.

In the result we find there are no merits in this appeal and it is accordingly dismissed.

Appeal Dismissed.

TARA SINGH AND OTHERS v. PUBLIC PROSECUTOR

[App. Crim. Juris. (Willan, C.J., Spenser-Wilkinson, J. and Russell, J.) August 10, 1948]

[Kuala Lumpur — Criminal Appeal No. 60 of 1948]

Evidence — Demeanour of witnesses — Impression as to demeanour must be based on whole of evidence of witness.

In this case the three appellants were convicted of participating in a gang robbery. At the trial it appeared that the whole case against the appellants rested upon the uncorroborated evidence of the complainant. The learned judge, in his grounds of judgment, stated that after careful consideration of the way in which the complainant gave his evidence and of his demeanour in the witness box he was satisfied that he was telling the truth. The appellants appealed against their conviction.

Held, (1) that the principle that an impression as to the demeanour of a witness ought not to be adopted by a trial judge without testing it against the whole of the evidence of the witness in question applies with even greater force to criminal cases, especially where, the witness is a non-European giving his evidence in his native tongue through interpretation; (2) that in the circumstances of the present case it was unsafe to convict the appellants upon the uncorroborated evidence of the complainant in the case.

Cases referred to :—

(1) *Yuill v. Yuill* (1945) 1 A.E.R. 183.

(2) *Watt v. Thomas* (1947) A.C. 484.

CRIMINAL APPEAL.

W. G. Hastings for the Appellants.

Austin (D. P. P.) for the Respondent.

The Judgment of the Court of Appeal was delivered by :—

Spenser-Wilkinson, J. : — In this case the three appellants were convicted of participation in a gang robbery alleged to have been committed in the shop of the complainant, Mohan Lal, on the night of the 10th January, 1948, when seven Sikhs came to his shop at 2.00 a.m. and, after assaulting him and threatening him with a knife, prevailed upon him to hand over all his money amounting to $854.

Counsel for the appellants admitted that the evidence for the defence was inconclusive but contended that the evidence for the prosecution was inadequate to support a conviction. Three witnesses gave evidence for the prosecution and a fourth witness, to whom later reference will be made, was tendered for cross-examination. The first two witnesses each stated that Mohan Lal had told them something as a reason for not being able to pay his debts to them when asked to do so. What reason he actually gave is not stated nor are the dates of the conversations deposed to, except that the first witness says it was some time in February. In so far, therefore, as the calling of these witnesses was an attempt to corroborate the evidence of Mohan Lal it failed.

The whole case against the appellants thus rested upon the uncorroborated testimony of Mohan Lal. It is beyond dispute that a conviction upon such evidence is legal and, in appropriate circumstances, proper. The learned trial judge, in his grounds of judgment, states that after careful consideration of the way in which Mohan Lal gave his evidence and of his demeanour in the witness-box he was satisfied that he was telling the truth. It has been laid down, however, that "an impression as to the demeanour of a witness ought not to be adopted by a trial judge without testing it against the whole of the evidence of the witness in question" [see judgment of Lord Greene, M. R. in *Yuill v. Yuill*[1]. That was a civil case and the principle applies with even greater force to criminal cases, especially where, as usually happens in this country, the witness is a non-European giving evidence in his native tongue through interpretation.

There were at least two matters arising from the evidence which, it seems to us, might have raised doubts in the mind of the learned judge had he fully considered them. The first was the cross-examination of the fourth witness, Santok Singh. Mohan Lal alleged in his evidence that he had borrowed $100 from Santok Singh the day before the robbery and that this money formed part of the $854, the total proceeds of the robbery. Santok Singh denied having lent him this money until February. However unreliable Santok Singh may have been as a witness the fact remains that in respect of the only point upon which the evidence of Mohan Lal was tested there was a conflict of evidence.

The other matter which seems to us to raise a doubt as to the reliability of Mohan Lal's evidence is the delay of two months in reporting the matter to the police. Indeed the report was made only after the police had visited the complainant's shop several times in some other connection. The complainant admitted that he did not tell his wife of the robbery and there is no evidence on the record that he ever told anyone about it at all until he made his report. The result is that there is absolutely nothing in this case beside the word of Mohan Lal to prove that a robbery ever took place, much less that the appellants were concerned in it.

In the case above cited the Master of the Rolls observed that Puisne Judges would be the last persons to lay claim to infallibility even in assessing the demeanour of witnesses. A similar observation was made by Lord Simon in his opinion in *Watt v. Thomas*[2]. Whilst an appellate court will always hesitate to overrule the decision of a trial judge based upon the demeanour of witnesses whom he has had the opportunity of seeing in the witness-box, we are of opinion that in the circumstances it was unsafe to

convict the appellants upon the uncorroborated evidence of this particular witness The circumstances to which we refer are first the contradiction of Mohan Lal's evidence by Santok Singh and secondly the inadequate consideration given by the learned judge regarding the lateness of the complainant's report tp othe Police in view of the circumstances already mentioned in this judgment.

For these reasons we allowed the appeal of each of the three appellants and quashed the convictions.

Appeal Allowed.

MANICKAM v. TREMELBYE (SELANGOR) RUBBER CO., LTD.

[K.L. — Civil Application No. 33 of 1948 (Willan, C.J., M.F.) August 13, 1948]

F.M.S. Civil Procedure Code (Cap. 7) Ss. 220, 531, 532 (1) — Extension of time to appeal — Whether mistake of counsel amounts to special circumstances — Meaning of the word 'deliver'.

This was an application under section 531 of the Federated Malay States Civil Procedure (Cap. 7) to extend the time in which to appeal against a judgment of the District Court at Kuala Lumpur. The facts of the case appear sufficiently in the judgment below.

Held, (1) that Section 220 of the Civil Procedure Code only requires that the grounds of judgment should be formally handed over and unless special arrangements have been made otherwise, such handing over should take place at the District Court; (2) that an application for leave to appeal out of time can only be granted if "special circumstances render an extension just".

Cases referred to :—

(1) *In re Helsby,* (1894) 1 Q.B. 742.

(2) *In re Coles and Ravenshear,* (1907) 1 K.B. 1.

(3) *In re Manchester Economic Building Society,* 24 C.D. 488.

(4) *Cusack v. London and North Western Railway Co.,* (1891) 1 Q.B. 347.

CIVIL APPLICATION.

K. C. Chia for the Applicant.

B. J. P. Joaquim for the Respondent.

Willan, C. J. : — This is an application under section 531 of the Federated Malay States Civil Procedure Code (Cap. 7) to extend the time in which to appeal against a judgment of the District Court at Kuala Lumpur.

The facts are as follows :—

(1) The applicant was the plaintiff in Selangor District Court Civil Suit No. 22 of 1948 and, as such, sued the respondent, who was the defendant in that suit, claiming damages for malicious prosecution. The suit was finally determined on the 2nd June, 1948, when judgment was given in favour of the respondent.

(2) On the 5th of June, 1948, the firm of Advocates and Solicitors acting for the applicant applied by letter to the Registrar of the District Court asking for copies of the notes of argument, evidence, and grounds of judgment, as they had been instructed to appeal.

(3) The letter referred to in paragraph (2) above was placed on the District Court case file. It was later endorsed and initialled by one of the staff of the District Court as follows:—

"Informed notes ready on 25.6.48.
Intd: ?
25/6".

(4) An affidavit sworn and filed by Mr. Chia in this application — (Mr. Chia appeared for the applicant on this application before me and he is a member of the firm of Advocates and Solicitors acting for the applicant) — contains the following two paragraphs:—

"I have since made enquiries of the Registrar, District Court, Kuala Lumpur, and I am informed that there is a record in the file of proceedings relating to this suit that my office was notified of the record being ready by telephone on the 25th June, 1948.

There is no record in the telephone book kept in my office of such message having been received".

There is no doubt that with regard to the contents of the first of those paragraphs they refer to the endorsement set out in paragraph (3) above. As regards the contents of the second of those two paragraphs, Mr. Chia stated that the telephone operator at that time employed by his firm is no longer so employed.

(5) The grounds of judgment were collected by the said firm of Advocates and Solicitors from the District Court, Kuala Lumpur, on the 5th of July, 1948.

(6) That apart from (a) writing to the District Court for the grounds of judgment on the 5th June, 1948, and (b) collecting such grounds of judgment from the District Court on the 5th July, 1948, the firm of Advocates and Solicitors acting for the applicant did nothing more to attempt to obtain those grounds of judgment in time to lodge an appeal within the period of one month from the date of judgment — i.e. from the 2nd June, 1948 — as provided by section 531 of the Civil Procedure Code.

Section 531, which is contained in Chapter XLV of the Civil Procedure Code dealing with appeals from Inferior Courts to the High Court, is as follows :—

> No appeal shall be brought after the expiration of one month from the time when the decision appealed against was pronounced. Provided that a Judge of the Supreme Court may, if he considers that special circumstances render an extension just, give leave to appeal within such extended time after the expiration of such one month as he may think fit.

Sub-section (i) of the next section, 532, is as follows :—

> Every appeal shall be preferred in the form of a memorandum in writing signed by the appellant or his solicitor and presented to the appellate Court. The memorandum shall be accompanied by a copy of the decree appealed against and (unless the